

ESTTA Tracking number: **ESTTA704722**

Filing date: **10/27/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Traxxas LP
Granted to Date of previous extension	11/14/2015
Address	6250 Traxxas Way McKinney, TX 75070 UNITED STATES
Attorney information	GREGORY W CARR CARR LAW FIRM PLLC 6170 RESEARCH ROAD SUITE 111 FRISCO, TX 75033 UNITED STATES gcarr@carrip.com, trademarks@carrip.com Phone:214.760.3000

Applicant Information

Application No	86537763	Publication date	09/15/2015
Opposition Filing Date	10/27/2015	Opposition Period Ends	11/14/2015
Applicant	KIDZTECH TOYS MANUFACTURING LIMITED ROOM 1201, 12/F, INTER-CONTINENTAL PLAZA KOWLOON, HONG KONG		

Goods/Services Affected by Opposition


Class 028. First Use: 2013/10/00 First Use In Commerce: 2013/10/00 All goods and services in the class are opposed, namely: Toys, namely, construction toys, electric action toys, electronic learning toys; radio controlled toy vehicles; scale model vehicles; toy vehicles; remote control toys, namely, cars, race cars, airplanes,; games, namely, card games, board games, chess games; mechanical, electronic and electromechanical toys, namely, mechanical action toys; electronic hand-held toys and games, namely, hand-held electronic games adapted for use with television receivers only; outdoor toys, namely, outdoor activity game equipment sold as a unit comprising sports balls for playing games


Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3169710	Application Date	12/15/2004
Registration Date	11/07/2006	Foreign Priority	NONE

		Date	
Word Mark	T-MAXX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/11/28 First Use In Commerce: 1999/12/23 Radio-controlled model vehicles and parts therefor		
U.S. Registration No.	3191106	Application Date	12/15/2004
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	MAXX		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Radio-controlled model vehicles and parts therefor		

U.S. Registration No.	3619270	Application Date	10/07/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	E-MAXX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2000/12/04 First Use In Commerce: 2000/12/04 radio-controlled model vehicles and parts therefor		

U.S. Registration No.	3697101	Application Date	07/15/2003
Registration Date	10/13/2009	Foreign Priority Date	NONE
Word Mark	MINI MAXX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2009/07/17 First Use In Commerce: 2009/07/17 radio controlled scale model vehicles equipped with an electric motor or an internal combustion engine, and a wireless control signal receiver mounted on the vehicle enabling remote control of vehicle speed and steering, and parts therefor

Attachments	TRAX 3105018 Grounds For Opposition.pdf(51660 bytes) 78533121#TMSN.png(bytes) 78533111#TMSN.png(bytes) 77587094#TMSN.png(bytes) 78274583#TMSN.png(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gregory W. Carr/
Name	GREGORY W CARR
Date	10/27/2015

As grounds for this Opposition, Opposer alleges:

1. Traxxas LP, (“Opposer”) has since at least November 28, 1999, used and continues to use the mark “T-MAXX” to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Opposer registered its mark T-MAXX on November 7, 2006 (Reg. No. 3169710) for the same goods after making an application for registration on December 15, 2004. Opposer’s right to use its T-MAXX mark has become incontestable.

2. Opposer has since at least December of 1999 used and continues to use the mark “MAXX” to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Opposer registered its mark MAXX on January 2, 2007 (Reg. No. 3191106) for the same goods after making an application for registration on December 15, 2004. Opposer’s right to use its MAXX mark has become incontestable.

3. Opposer has since at least December 4, 2000, used and continues to use the mark “E-MAXX” to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Opposer registered its mark E-MAXX on May 12, 2009 (Reg. No. 3619270) for the Goods after making an application for registration on October 7, 2008. Opposer’s right to use its E-MAXX mark has become incontestable.

4. Opposer has since at least July 17, 2009, used and continues to use the mark “MINI MAXX” to identify, advertise, and promote its parts for radio controlled scale model vehicles. Opposer registered its mark MINI MAXX on October 13, 2009 (Reg. No. 3697101) for the same goods after making an application for registration on July 15, 2003. Opposer’s right to use its MINI MAXX mark has become incontestable.

5. It has come to the attention of Opposer that the entity Kidztech Toys Manufacturing Limited (“Applicant”) has applied for registration of the stylized words

“TOPMAXX Racing” (the “TOPMAXX RACING mark”), in the United States Patent and Trademark Office, as shown in U.S. Application Ser. No. 86/537,763 (the “Application”), having a filing date of February 18, 2015 and indicating an earliest use date of October 2013. As example of this mark is shown below:



The Application for the TOPMAXX RACING mark seeks registration in Class 28 for: *Toys, namely, construction toys, electric action toys, electronic learning toys; radio controlled toy vehicles; scale model vehicles; toy vehicles; remote control toys, namely, cars, race cars, airplanes,; games, namely, card games, board games, chess games; mechanical, electronic and electromechanical toys, namely, mechanical action toys; electronic hand-held toys and games, namely, hand-held electronic games adapted for use with television receivers only; outdoor toys, namely, outdoor activity game equipment sold as a unit comprising sports balls for playing games* (the “Applicant’s Goods”).

6. Applicant seeks to register the TOPMAXX RACING mark for Applicant’s Goods in International Class 028 as evidenced by the publication of the Application in the Official Gazette on September 15, 2015.

7. The TOPMAXX RACING mark is confusingly similar to Opposer’s T-MAXX, MAXX, E-MAXX, and MINI MAXX marks when the marks are viewed as a whole. The TOPMAXX RACING mark and Opposer’s T-MAXX, MAXX, E-MAXX, and MINI MAXX marks all include the term “MAXX.”

8. By virtue of Opposer's prior and senior rights arising from use of the T-MAXX, MAXX, E-MAXX, and MINI MAXX marks, the Applicant is barred from obtaining a registration of the TOPMAXX RACING mark, because the use and attempt to register by Applicant of the TOPMAXX RACING mark for the Applicant's Goods, without authorization by Opposer, creates a likelihood of confusion, under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), that there exists a common source, affiliation, and sponsorship with the goods provided by Opposer in connection with its marks T-MAXX, MAXX, E-MAXX, and MINI MAXX.

9. If Applicant is permitted to obtain the registration sought, and thereby obtain the *prima facie* exclusive right to use the TOPMAXX RACING mark in commerce for the Applicant's Goods, Opposer believes it will be harmed in that a cloud will be placed on Opposer's title in and to its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks and its right to enjoy the free and exclusive use thereof, and Opposer will be unfairly restricted in its rights to its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks. Additionally, if Applicant is permitted to obtain the registration, Opposer believes it will be harmed by the appearance of and, indeed, actual dilution or diminution of its right to oppose other applications to federally register marks confusingly similar to Opposer's TOPMAXX RACING mark and to seek relief from infringement of its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks. Further, the use of the TOPMAXX RACING mark, unauthorized by Opposer, misappropriates the goodwill of Opposer and unfairly gives the goods of Applicant a ready acceptance in the marketplace that is undeserved.